

**Mohamad Ramli bin Abdul Manan v Lim Chee Wee (President
of the Malaysian Bar)**

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO
N-02-778-04 OF 2012
APANDI ALI, BALIA YUSOF AND AZIAH ALI JJCA
1 APRIL 2014

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*Legal Profession — Disciplinary proceedings — Disciplinary board ('DB')
— Lawyer appealed to High Court against decision of DB citing person who was
President of Malaysian Bar as respondent — Whether High Court right to have
struck out president as respondent — Whether Bar Council was proper respondent
— Whether complaint to DB emanated from Bar Council although complaint
letter signed by president of Malaysian Bar — Whether High Court right to have
struck out appeal without hearing merits because appeal became defective with no
party as respondent*

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The respondent, Lim Chee Wee, in his capacity as President of the Malaysian Bar at the material time, had lodged a complaint against the appellant to the disciplinary board ('DB') under the Legal Profession Act 1976 ('LPA') alleging that the appellant had practised without a practising certificate and without professional indemnity insurance and had failed to inform the Bar Council if he had ceased practice. The DB requested the appellant to appear before it to make his representations but he failed to do so. As a result, the DB imposed on the appellant a RM500 fine payable to the Bar's discipline fund. The appellant appealed to the High Court against the DB's decision citing as respondents the DB's chairman at the material time and the respondent herein as president of the Malaysian Bar. The High Court allowed applications by both the respondents to be struck out as parties to the appeal and then struck out the appeal itself. The instant appeal was only against the decision to strike out the respondent herein as a party without a consequential order that either the Bar Council be substituted in his place or that it intervene in the proceedings. The appellant also contended that the High Court was wrong to have struck out his appeal without hearing the merits.

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Held, dismissing the appeal:

- (1) The letter of complaint to the DB bore the letterhead of the Bar Council and was signed by the respondent in his capacity as president of the Malaysian Bar. Clearly, the complaint against the appellant emanated from the BC. Section 99(3) of the LPA allowed the BC or a state bar committee to make a complaint of its own motion to the DB against an advocate and solicitor and that was precisely what was done in the present

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- A case when the Bar Council, through the respondent, lodged the complaint against the appellant (see paras 13 & 14).
- (2) As the complainant was the Bar Council, the Bar Council was the correct and proper party to be cited as a respondent in the appeal and not the president of the Malaysian Bar. Further, pursuant to ss 42 and 47 of the LPA, the only body that could undertake and defend legal action for and against the Malaysian Bar was the Malaysian Bar represented by the Bar Council (see para 15).
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- C (3) The High Court did not err in allowing the respondent's application to be struck out as a party to the appeal. Upon both respondents being struck out as parties, only the appellant remained. There was no respondent to speak of. The appeal was thus rendered defective and the High Court was right in striking out the appeal (see para 16).

D [Bahasa Malaysia summary]

Responden, Lim Chee Wee, dalam kapasitinya sebagai Presiden Majlis Peguam Malaysia pada masa material, telah melaporkan aduan terhadap perayu kepada lembaga tatatertib ('LT') di bawah Akta Profesion Undang-Undang 1976 ('APU') mendakwa bahawa perayu telah mengamalkan undang-undang tanpa sijil amalan dan tanpa insurans indemniti profesional dan telah gagal untuk memberitahu Majlis Peguam jika dia telah tamat beramalan undang-undang. LT meminta perayu berhadapan dengannya untuk membuat representasinya tetapi dia gagal berbuat sedemikian. Akibatnya, LT mengenakan ke atas perayu denda RM500 yang boleh dibayar kepada dana tatatertib Majlis Peguam. Perayu merayu kepada Mahkamah Tinggi terhadap keputusan LT merujuk responden-responden sebagai pengerusi LT pada masa material dan responden di sini sebagai presiden Majlis Peguam. Mahkamah Tinggi membenarkan permohonan-permohonan oleh kedua-dua responden untuk dibatalkan sebagai pihak-pihak kepada rayuan dan kemudiannya membatalkan rayuan tersebut sendiri. Rayuan ini hanya terhadap keputusan untuk membatalkan responden di sini sebagai pihak tanpa perintah penting bahawa sama ada Majlis Peguam menggantikan tempatnya atau ia mencelah dalam prosiding. Perayu juga berhujah bahawa Mahkamah Tinggi adalah salah untuk membatalkan rayuannya tanpa mendengar merit.

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Diputuskan, menolak rayuan:

- (1) Surat aduan kepada LT mempunyai kepala surat Majlis Peguam dan ditandatangani oleh responden dalam kapsitinya sebagai Presiden Majlis Peguam Malaysia. Jelas, aduan terhadap perayu datang daripada Majlis Peguam. Seksyen 99(3) APU membenarkan Majlis Peguam atau ahli jawatankuasa majlis peguam negeri untuk membuat aduan usulnya sendiri kepada LT terhadap peguambela dan peguamcara dan bahawa ini secara tepat apa yang dibuat dalam kes ini apabila Majlis Peguam, melalui
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- responden, melaporkan aduan terhadap perayu (lihat perenggan 13 & 14). A
- (2) Memandangkan pengadu adalah Majlis Peguam, Majlis Peguam adalah pihak yang betul dan wajar untuk dirujuk sebagai responden dalam rayuan dan bukan Presiden Majlis Peguam Malaysia. Selanjutnya, berikutan ss 42 dan 47 APU, satu-satunya badan yang boleh menjalankan dan membela tindakan undang-undang untuk dan terhadap Majlis Peguam Malaysia adalah Majlis Peguam Malaysia diwakili oleh Majlis Peguam (see para 15). B
- (3) Mahkamah Tinggi tidak salah dalam membenarkan permohonan responden untuk dibatalkan sebagai pihak kepada rayuan. Apabila kedua-dua responden dibatalkan sebagai pihak-pihak, hanya tinggal perayu. Oleh itu tiada responden di sini. Rayuan oleh itu adalah cacat dan Mahkamah Tinggi betul dalam membatalkan rayuan tersebut (lihat perenggan 16).] C D

Notes

For cases on disciplinary board, see 9 *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1486–1489. E

Cases referred to

Lembaga Tatatertib Peguam-Peguam v Hoo Lin Coln & Anor [2008] 4 MLJ 1; [2008] 4 CLJ 317, FC (refd)

Majlis Peguam v Poh Fook Yuen & Anor [2012] 5 MLJ 18; [2012] 6 CLJ 36, CA (refd) F

Legislation referred to

Legal Profession Act 1976 ss 29, 31(2), 36(1), 42, 47, 54(2), 94(3)(k), 99(3)

Legal Profession (Professional Liability)(Insurance) Rules 1992 rr 5, 6 G

Appeal from: Originating Summons No 25–8–10 of 2011 (High Court, Seremban)

The appellant in person. H

Caroline George (YC Koo with her) (Trevor George Partnership) for the respondent.

Aziah Ali JCA (delivering judgment of the court):

BACKGROUND FACTS I

[1] By a letter dated 31 March 2011 (p 115 of the appeal record) the respondent Lim Chee Wee, who was the President of the Malaysian Bar at the material time, lodged a complaint with the Disciplinary Board ('the DB')

- A** against the appellant for breach of, inter alia, ss 29, 31(2) and 36(1) of the Legal Profession Act 1976 ('the Act'); the Bar Council's Rules on Cessation of, or Change in, Practice, and/or rr 5 and 6 of the Legal Profession (Professional Liability)(Insurance) Rules 1992 in that the appellant had:
- B** (a) practised without a practising certificate;
- (b) practised without the requisite Professional Indemnity Insurance Coverage for the year 2011, from 1 January 2011 to 31 March 2011 and continuing, and/or
- C** (c) has failed to properly inform the Bar Council of any cessation of practice as required.

D [2] The Bar Council ('BC') took the view that the appellant may have committed a misconduct under s 94(3)(k) of the Act and requested that an inquiry into the complaints be conducted.

E [3] Consequent to the complaint, the DB had, by letter dated 12 August 2011, requested the appellant to attend before it on 10 September 2011 to make his representations (p 120 of the appeal record). Unfortunately, as can be discerned from the DB's order dated 10 September 2011 (p 124 of the appeal record), the appellant did not appear before the DB.

F [4] By the said order, the DB imposed on the appellant a penalty of RM500 payable to the Discipline Fund. Being dissatisfied with the decision of the DB, the appellant filed his appeal to the Seremban High Court vide Originating Motion No 25–8–10 of 2011.

ORIGINATING MOTION NO 25–8–10 OF 2011

G [5] In the appeal to the High Court, the appellant named Khalid Ahmad bin Sulaiman, the chairman of the DB as the first respondent and the respondent herein, the President of the Malaysian Bar, as the second respondent. Both respondents then filed separate applications to be struck out as parties to the appeal (encls 5 and 9). The application encl 5 was filed by the respondent and the application encl 9 was filed by the Chairman of the DB. The learned judge allowed both applications.

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I [6] In respect of the respondent's application encl 5, the learned judge was of the view that since the respondent who was the Chairman of the Malaysian Bar was not involved in the disciplinary proceedings, it was inappropriate to name him as a party in the appeal. The learned judge found that the appellant's originating motion which had named the wrong parties was bad in law. The learned judge then struck off the appellant's appeal.

[7] In respect of the respondent's application, the order of the High Court dated 22 March 2012 reads as follows: A

- (a) *permohonan responden kedua (lampiran 5) dibenarkan dan responden kedua dibatalkan sebagai pihak dalam rayuan ini;* B
- (b) *kos permohonan ini sebanyak RM500 dibayar oleh perayu kepada responden kedua; dan*
- (c) *selanjutnya rayuan perayu yang dibawa melalui Usui Pemula bertarikh 18 Oktober 2011 dan affidavit yang diikrarkan oleh Mohamad Ramli Abdul Manan pada 17 Oktober 2011 terhadap responden kedua dibatalkan.* C

[8] The appellant then filed this appeal against the decision of the learned judge aforementioned. D

[9] By the amended notice of appeal dated 28 March 2012 the appellant appeals against the decision of the High Court as follows:

- (a) *membenarkan permohonan Lim Chee Wee, President Badan Peguam Malaysia yang terkandung dalam Notis Usul bertarikh 14 November 2011 (Kandungan 5) untuk membatalkan namanya sebagai responden dengan kos tanpa perintah susulan supaya Majlis Peguam dinamakan sebagai pengganti atau mengarahkan Majlis Peguam untuk mencelah; dan* E
- (b) *membatalkan rayuan perayu terhadap keputusan/perintah Lembaga Tatatertib Peguam-Peguam tanpa mendengar merit rayuan.* F

No appeal was filed in respect of the decision on encl 9.

[10] We heard submissions by the appellant who represented himself, and submissions by Ms Caroline George, learned counsel for the respondent. Having considered the appeal record and the submissions, we were unanimous that this appeal be dismissed and we so ordered. We awarded costs of RM5,000 to the respondent. The deposit was refunded to the appellant. We now give our reasons below. G

THE APPEAL H

[11] Before us the appellant submits that the respondents were named as parties so that they could assist the court in determining and adjudicating the appeal more effectively. It is submitted that there was no necessity for the respondents to apply to be struck off as parties because the High Court was obliged to hear his appeal whether or not they were present. I

[12] For the respondent, learned counsel submits that the respondent was

- A** also, by virtue of s 54(2) of the Act, the Chairman of the BC. The complaint against the appellant was made by the respondent for an on behalf of the BC. Therefore it is submitted that the complainant is the BC and is the proper party to be cited as a respondent.
- B** [13] We have perused the letter of complaint to the DB (p 115 of the appeal record) and we find that the letter bears the letterhead of the BC and was signed by the respondent in his capacity as the president of the Malaysian Bar. Clearly the complaint against the appellant emanated from the BC.
- C** [14] Section 99(3) of the Act allows the BC or a State Bar Committee to make a complaint of its own motion to the DB against an advocate and solicitor. In *Lembaga Tatatertib Peguam-Peguam v Hoo Lin Coln & Anor* [2008] 4 MLJ 1; [2008] 4 CLJ 317; [2008] 1 LNS 194, Augustine Paul FCJ said, inter alia, as follows:
- D** It is therefore clear that it is the Bar Council that has been entrusted with the duty of maintaining the standard and conduct of advocates and solicitors and not the DB. It acts on its own motion in cases involving misconduct under s. 94 of the LPA. In other cases warranting disciplinary action the DB acts on complaints made to it by, inter alia, the Bar Council. It is thus beyond doubt that the Malaysian Bar is the guardian of professional conduct and etiquette of advocates and solicitors.
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- In the present case that was precisely what had been done when the BC, through the respondent, lodged the complaint against the appellant.
- F** [15] Based on the fact that the complainant was the BC (see p 124 of the appeal record), we agree with learned counsel for the respondent that the BC is the correct and proper party to be cited as a respondent in this appeal, and not the president of the Malaysian Bar. Further pursuant to ss 42 and 47 of the Act, the only body that may undertake and defend legal action for and against the Malaysian Bar is the Malaysian Bar, represented by the BC (*Majlis Peguam v Poh Fook Yuen & Anor* [2012] 5 MLJ 18; [2012] 6 CLJ 36).
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- H** [16] We therefore find that the learned judge has not erred in allowing the respondent's application for him to be struck out as a party to the appeal. Upon both respondents being struck out as parties, only the appellant remained. There was no respondent to speak of. The appellant's appeal was thus rendered defective. In the circumstances, we find that the learned judge was correct in striking out his appeal.
- I** *Appeal dismissed.*

Reported by Ashok Kumar